

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

RUSSELL BLAINE KISER	§	
v.	§	CIVIL ACTION NO. 9:08cv112
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Russell Kiser, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of disciplinary action taken against him during his confinement in TDCJ-CID. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Kiser states that he received a disciplinary case for allegedly assaulting an officer. He says that the charging officer's testimony differed from the use of force report, he was denied the right to introduce evidence, the hearing tapes were lost or destroyed as part of a cover-up, the investigation done by the Office of the Inspector General lasted too long, and the "lies" in the case do not match up to the Use of Force Report as to the locations of other officers in their duty posts. As punishment for the disciplinary case, Kiser received 45 days of cell and commissary restrictions, 15 days of solitary confinement, reduction in classification status, and the loss of 350 days of good time credits. Kiser did not state whether or not he is eligible for release on mandatory supervision, but says that he is serving a life sentence, which renders him automatically ineligible for release on mandatory supervision under Texas law. Arnold v. Cockrell, 306 F.3d 277, 279 (5th Cir. 2002).

After review of the pleadings, the Magistrate Judge issued a Report on June 24, 2008, recommending that the petition be dismissed. The Magistrate Judge concluded that Kiser had failed

to show the deprivation of a constitutionally protected liberty interest, as set forth by the Supreme Court in Sandin v. Conner, 115 S.Ct. 2293, 2301 (1995). The Magistrate Judge further recommended that Kiser be denied a certificate of appealability *sua sponte*.

Kiser received a copy of the Magistrate Judge's Report on June 26, 2006, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

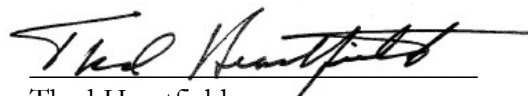
ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Russell Blaine Kiser is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this the 20 day of **August, 2008**.


Thad Heartfield
United States District Judge